

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 85641-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 27th day of November 2007
by Ken Ross
Acting Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On October 8, 2007, XXXXX, on behalf of her minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on October 15, 2007.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on October 29, 2007.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) through the Michigan Education Special Services Association (MESSA), an underwritten group. Coverage is governed by the MESSA Tri-Med Group Health Care Benefit Certificate (the

certificate).

The Petitioner, born XXXXX, 2003, has been diagnosed as autistic. He received applied behavior analysis (ABA) treatment at William Beaumont Hospital from June 4 through August 24, 2007. The cost of this care was \$9,360.00.

Payment for the Petitioner's ABA treatment was denied by BCBSM as not covered under the certificate. The Petitioner appealed. After a managerial-level conference, BCBSM did not change its decision and issued a final adverse determination dated August 7, 2007.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's ABA treatment?

IV ANALYSIS

Petitioner's Argument

Given the Petitioner's presentation with autism spectrum disorder, significant developmental delays, and comorbid behavior disorder, his psychologist prescribed intensive psychotherapy using the principles of ABA, to be implemented in a developmentally appropriate fashion and conducted by behavioral specialists.

The Petitioner says that "ABA is the most solid therapeutic approach to assist in helping people with problematic behaviors and their resulting emotional pain, [and] it is also recognized by various prestigious people, mental health groups, medical groups and governmental agencies as being the most efficacious intervention for people with autism."

According to the Petitioner, the ABA therapy that he received at Beaumont was intensive outpatient therapy that was medically necessary and not experimental or investigation for treatment of his condition. Therefore, the Petitioner believes this care is a covered benefit and BCBSM is required to pay for it.

BCBSM's Argument

In its August 7, 2007, final adverse determination, BCBSM indicated that it did not cover the

Petitioner's ABA services because it considered them investigational. Experimental and investigational services are excluded in Section 9 of the certificate.

BCBSM says the Petitioner originally filed a written grievance with MESSA concerning the ABA therapy through Beaumont. When that grievance was completed, MESSA concluded that the Petitioner's ABA therapy was not a covered benefit because "educational care and cognitive therapy" are excluded under the certificate.

Thus, BCBSM denied payment for the ABA care on two grounds, saying it was excluded because (1) the services are experimental or investigational; and (2) the services are educational care and cognitive therapy.

Therefore, BCBSM believes that the Petitioner's ABA therapy is not a covered benefit and it is not required to pay for them.

Commissioner's Review

BCBSM's denial was based on these two exclusions found in Section 9 of the certificate (pages 9.1 and 9.2):

- educational care and cognitive therapy;
* * *
- services and supplies that are not medically necessary according to accepted standards of medical practice including any services which are experimental or investigational in nature[.]

The question of whether the Petitioner's ABA therapy is investigational or experimental for treatment of the Petitioner's condition was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is certified by the American Board of Pediatrics; certified by the American Board of Psychiatry and Neurology as a diplomate in the specialty of neurology with special competence in child neurology; a member of the American Academy of Neurology; and in active practice.

The IRO reviewer said that ABA is an accepted and effective treatment for autism and indicated that it is no longer investigational for treatment of the Petitioner's condition. The IRO

reviewer included lengthy excerpts from an overview of applied behavioral analysis from the Kennedy-Krieger Institute at the Johns Hopkins University School of Medicine, and the conclusion of that overview (and of the IRO reviewer) is that ABA is a standard and efficacious therapy and not considered to be experimental or investigational.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case. Therefore, the Commissioner accepts the IRO reviewer's conclusion and finds that ABA therapy is not experimental or investigational.

BCBSM's second argument is that ABA therapy is excluded because the certificate excludes "educational care and cognitive therapy." That was the reason MESSA gave when it initially denied coverage in its May 24, 2007, letter to the Petitioner's mother. Neither MESSA nor BCBSM provided any explanation for why they thought this exclusion applied in the Petitioner's case, and the terms "educational care" and "cognitive therapy" are not defined or discussed in the certificate or in any material submitted as part of this review.

Based on the January 21, 2007, letter written by XXXXX, PhD, the Petitioner's psychologist at Beaumont Hospital, the Commissioner finds that the services he received were not "educational care." The Commissioner's finding is based on Dr. XXXXX's description of those services as "intensive psychotherapeutic intervention" that adheres to clinical guidelines and is structured for the individual's specific problems and actively involves the Petitioner's parents. The Commissioner does not find this to be a description of "educational care."

The Commissioner also finds that the Petitioner's ABA therapy was not "cognitive therapy." In the overview of applied behavioral analysis from the Kennedy-Krieger Institute cited by the IRO reviewer is this discussion:

ABA-based interventions are essentially a highly specialized type of Behavior Therapy that place greater emphasis on more precisely defining and recording behavior, and the use of highly rigorous methods for clinical treatment evaluation. Emphasizing the focus on experimental methodology, Baer, Wolf, and Risley (1968) defined the criteria for what constitutes ABA-based procedures, specifically ABA-based procedures must: 1) involve an analysis of socially important behavior in a manner in which the behavior is operationally defined and explicitly and reliably measured so that a believable demonstration of the events responsible for the occurrence of the behavior is produced; 2) alter the targeted behavior enough to produce a meaningful change (i.e., a clinically significant improvement) and provide for the generalization of the behavior change; and 3) employ procedures that are tied to well established principles of behavioral science (i.e., operant learning). [Underlining added]

Furthermore, cognitive therapy is defined in *Merriam-Webster's Online Dictionary* as "psychotherapy especially for depression that emphasizes the substitution of desirable patterns of thinking for maladaptive or faulty ones."¹ From this, the Commissioner concludes that ABA is behavior therapy, not cognitive therapy.

In summary, the Commissioner finds that neither of the two exclusions cited by BCBSM applies in this case and therefore the Petitioner's ABA therapy is presumptively a covered benefit under the certificate. It is possible that there are other reasons for denying coverage that might have been raised by BCBSM. However, the Commissioner's decision is based solely on the two exclusions cited.

V ORDER

Respondent BCBSM's August 7, 2007, final adverse determination is reversed. BCBSM shall authorize and cover the Petitioner's ABA therapy provided from June 4, 2007, to

1. <http://m-w.com/dictionary/cognitivetherapy> (accessed November 14, 2007).

August 24, 2007, within 60 days from the date of this Order and provide the Commissioner with proof of compliance within seven days of compliance. To enforce this Order, the Petitioner must report any complaint regarding authorization to the Office of Financial and Insurance Services, Health Plans Division, toll-free at (877) 999-6442.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.